



Testimony of Marcia Hams
Director of Prescription Access and Quality,
Community Catalyst

Submitted in writing to the
Connecticut Public Health, Human Services, and Insurance & Real Estate Committee

Regarding Senate Bill 270

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I want to thank Senator Harris, Representative Ritter and members of the Committee for the opportunity to submit this written testimony today on behalf of Community Catalyst, a national non-profit advocacy organization dedicated to quality affordable health care for all. Community Catalyst works in over 45 states and at the national level on a wide variety of health care initiatives, including improvements in prescription drug access, consumer safety, manufacturing and marketing reform.

I want to address an issue of widespread concern in the medical profession and among state and national policymakers—the extensive financial relationships between drug companies and health care providers, and the potential policy solutions being considered here and nationally.

Pharmaceuticals and medical devices are central to modern health care, and academic-industry collaboration is vital for their development. At the same time, it is essential that the use of these products be guided by sound evidence and good science. Every patient deserves the safest, most effective and — others things being equal — the most affordable treatment. Private health insurers, public programs and taxpayers are also impacted by the costs of prescription drugs and have a vested interest in prudent purchasing and prescribing free from marketing influences.

The pharmaceutical and medical device industries spend a great deal of money to influence a physician's choice of products. Thirty billion dollars a year for marketing just by pharma companies is a conservative estimate.¹ Most of that is focused on doctors, and a recent study in the *New England Journal of Medicine* found that 94% of U.S. physicians had some kind of financial relationship with the industry. Often it was the acceptance of free food or gifts. But 18% -- almost one in five -- were being paid as consultants to one or more companies. Nearly as many again were being paid to give promotional talks for a particular product. Only around 3% of the financial relationships were for enrolling patients in clinical studies.

A doctor choosing which drug to give his or her patient has a conflict of interest if he/she is being paid by the company that markets the drug. Some financial relationships, such as gifts from a company to a health care provider, are unnecessary, do not contribute to patient care and are easily eliminated. Other relationships — such as research — are necessary and beneficial, but here greater transparency serves patients and the public good.

¹ Donohue JM, et al. *N Engl J Med*. 2007;357:673-681. For a more complete discussion of estimates of marketing spending, see Pew Prescription Project http://www.prescriptionproject.org/tools/sunshine_docs/files/0004.pdf

This is consistent with major recommendations issued by the Institute of Medicine and the Association of American Medical Colleges, and by other leaders in the medical profession.^{2,3}

There is a large body of evidence on the pervasiveness and influence of pharmaceutical marketing. One study found that medical residents received an average of 75 “giveaway” items per year.⁴ Lunches, dinners and pens, coffee mugs and other branded items are all designed to open doors for industry sales reps. And social scientists have demonstrated that even small gifts create a deep sense of obligation and reciprocity—it is human nature – and such gifts do influence the judgments we make.^{5,6}

Surveys show that most physicians recognize this potential influence, even while often believing that they *personally* are not affected. In one study, only one percent of medical residents said that their own prescribing was heavily influenced by industry sales representatives. But those same doctors were much more likely to say that their *peers* were heavily influenced. In fact 84 percent said their peers were heavily or somewhat influenced by sales reps. [Similarly, most people rate themselves as above average drivers; they can’t all be right.]

Patients are also more likely than physicians to believe that gifts influence prescribing and increase healthcare costs.⁷ A survey commissioned by Community Catalyst and the Pew Prescription Project, carried out by an independent survey firm found that 68% of Americans support legislation requiring disclosure of gifts and payments.⁸

Minnesota established a gifts ban and disclosure law in 1993 to address this problem and is considering strengthening the law this year.⁹ Other states, including Massachusetts and Vermont have gone further, with more complete disclosure provisions and comprehensive limits on gifts. California, the District of Columbia, Maine and West Virginia also have more limited disclosure requirements, albeit more limited, a disclosure bill has been filed in Colorado this session, and New York is considering a disclosure measure in its budget process this year.

The information gained through Minnesota and Vermont’s disclosure laws has been helpful. In Minnesota, the law allowed the discovery that an individual on the committee

² The Institute of Medicine, the nation’s most influential medical advisory group, released a report in April 2009 recommending that Congress create a national program requiring pharmaceutical and medical device companies and their foundations to publicly report payments to physicians and other prescribers, biomedical researchers and their institution. cf Institute of Medicine (2009) Policies on conflict of interest: Overview and evidence. In: Lo B, Field MJ, editors. Conflict of interest in medical research, education, and practice. Washington (D.C.): The National Academies Press. pp. 51–78

⁴ Komesaroff, P.; Kerridge, I. Ethical Issues Concerning the Relationships between Medical Practitioners and the Pharmaceutical Industry. *MJA* 2002; 176(3): 118-121.

⁵ Katz D, Caplan A, Merz J. All gifts large and small: Toward an understanding of the ethics of pharmaceutical industry gift giving. *The American Journal of Bioethics*. 2003;3:39-46.

⁶ Wazana, A. Physicians and the Pharmaceutical Industry: Is a Gift Ever Just a Gift? *JAMA*. 2000;283(3):373-380.

⁷ Gibbons et al. A comparison of physicians’ and patients’ attitudes toward pharmaceutical industry gifts. *JGIM* 1998; 13: 151-154.

⁸ Pew Prescription Project survey conducted by ICR (June 2008)

http://www.prescriptionproject.org/tools/sunshine_docs/files/0010.pdf

⁹ Minnesota Statutes § 151.461 – Gifts To Practitioners Prohibited and 151.47 Wholesale Drug Distributor Licensing Requirements.

choosing drugs for Minnesota Medicaid patients was being paid tens of thousands of dollars by the industry.¹⁰ The reports also led to the revelation that a number of physicians were paid by drug companies to conduct clinical trials or promote certain medicines while under sanction by the State Board of Medicine for disregarding the welfare of patients.¹¹ Vermont's Sixth Annual disclosure report, for 2009, raised concerns by policymakers and the public when it showed that 78 pharmaceutical manufacturers spent \$2,935,248 on 2280 Vermont doctors, hospitals, universities and others for the purpose of marketing their drugs.¹² Vermont's population is 621,270, or about one sixth the size of Connecticut.

It is important to note that the major pharmaceutical and medical device trade associations, along with individual companies, have endorsed transparency proposals at the federal level and have recommended that their member companies stop giving gifts to health care providers. Several of the largest pharmaceutical companies are already voluntarily disclosing financial relationships. And four major medical device companies also disclosed payments as part of deferred prosecution agreements for the payment of illegal kickbacks to physicians. While the number of companies taking voluntary action remains tiny, it illustrates that disclosure is neither too onerous, nor harmful to innovation.

There is now pending *federal* disclosure legislation, the Physician Payments Sunshine Act, a bipartisan bill that has been included in the Senate and House health reform bills and in President Obama's proposal released this week. The Sunshine Act is a transparency statute that contains very careful preemption language that ensures that companies will not face duplicative reporting requirements with state statutes, but also protects the right of state legislatures to act.

Connecticut's SB 270 would require transparency in reporting by drug and device companies but, like other state laws and the proposed Sunshine Act, would not prevent physicians from undertaking research or partnering with medical device or pharmaceutical firms to develop new products. However, given that industry opponents of SB270 have raised questions about the impact of the Massachusetts law on the health of the Massachusetts biotech and pharmaceutical industry, I want to specifically address this issue in more detail.

The Massachusetts experience

The Massachusetts gift ban and disclosure law, passed in August 2008 as Chapter 305 in An Act to Promote Cost Containment, Transparency and Efficiency in the Delivery of Quality Health Care, requires pharmaceutical companies to disclose to the state, the nature and value of any payments to health care providers greater than \$50. The Act also prohibits companies from giving providers gifts and meals associated with marketing activities. The ban on gifts was effective July 1, 2009, and data collection for public reporting also began on that date. The law does not limit compensation for research and legitimate consulting arrangements, the conduct of clinical trials or the provision of drug samples.

¹⁰ Harris, G. Doctors' Ties to Drug Makers Are Put on Close View. *The New York Times*, March 21, 2007; Lohn, M. Minnesota Law Sheds Light on Drug Companies, Associated Press, August 22, 2007

¹¹ Harris, G, Roberts, J. After Sanctions, Doctors Get Drug Company Payments. *The New York Times*, June 6, 2007.

¹² "Drug Marketing Disclosures Show Nearly \$3 Million In Payments To Vermont Prescribers", April 15, 2009. Office of the Attorney General.

<http://www.atg.state.vt.us/news/drug-marketing-disclosures-show-nearly-3-million-in-payments-to-vermont-prescribers.php>

The bill was opposed by industry during legislative debate and rulemaking in the summer of 2008. For example, the Biotechnology Industry Organization (BIO) and the Massachusetts Biotech Council took out a full-page advertisement in the *Boston Globe* suggesting that clinical trials and conferences would leave the state if the law were passed. Former GlaxoSmithKline chief Chris Viehbacher wrote a letter suggesting his company would remove its investment from the state if the gift ban were implemented, a statement the company later retracted.¹³

Industry investment in Massachusetts since passage of Chapter 305

Growth and expansion of the Massachusetts life sciences sector has continued since passage of the Cost and Quality Act. Genzyme, Bristol Myers Squibb, Shire Pharmaceuticals, and Acceleron Pharma have all announced capital investments.¹⁴ According to a report in January by the *New York Times*, there is currently \$2.3 billion worth of factory development in the Boston area. The Massachusetts Biotech Council told the *Times* it is the first time in a decade that the industry is building new factories, instead of expanding on old ones. For instance, Bristol-Myers Squibb is building a \$750,000 million, 260-worker factory and office complex outside of Boston. Shire is set to complete factory construction worth \$394 million in Lexington early this year. Genzyme has just completed a \$300 million manufacturing complex in Framingham, expanding its 18-building presence there. And Cambridge's Acceleron Pharma doubled its space in summer 2008.

In a speech about small business on Feb. 10, 2010, Massachusetts Governor Deval Patrick highlighted the exceptional growth of biotech among Massachusetts industries in the last year. According to Gov. Patrick, one of every five venture capital dollars nationally is spent in Massachusetts. As a result of the state's \$1 billion life sciences incubator, 28 biotech companies are expected to create 800 jobs in Massachusetts this year. Genzyme is adding 500 workers in the state in 2010, and biotech construction projects are planned across the state.¹⁵

Finally, we are aware of no reports by companies that they have withdrawn or reduced their presence in the state since the passage of the Massachusetts law, nor have we been able to identify reports of biomedical or clinical research funding that has left the state because of the disclosure requirements.

Life sciences conferences and conventions

Though the convention industry expressed concern over the effects the gift rules could have on attracting medical conferences, officials within the convention industry have since said the law has had no negative impact on convention planning in the state.

Pat Moscaritolo, head of the Greater Boston Convention and Visitors Bureau, recently told *Medical Meetings*, an industry publication, that "the actual fallout out [of the gifts law] has been about nil." He said that once companies understood the rules—which mirror the industry's own

¹³ Boston Herald. Glaxo Exec Blasts State. May 7, 2008. Retrieved at: <http://www.bostonherald.com/business/general/view.bg?articleid=1092301&format=comments>

¹⁴ New York Times. Biopharmaceutical Industry Is Banking on Boston. Jan 6, 2010. Retrieved at: <http://www.nytimes.com/2010/01/06/realestate/06bio.htm>

¹⁵ Gov. Deval Patrick. Small Business Jobs Bills Remarks, Boston. Feb. 10, 2010. Retrieved at: http://www.mass.gov/?pageID=gov3terminal&L=3&L0=Home&L1=Media+Center&L2=Speeches&sid=Agov3&b=terminalcontent&f=text_2010-02-10_jobs&csid=Agov3

voluntary gifts code already in effect—initially hesitant companies reupped future convention contracts and included Boston in future site-selection proposals. Mr. Moscaritolo said that companies were already far ahead of the state's regulations, and still viewed Boston as a top conference destination. "Long-term we'll find out whether these rules in our state and others will drive down healthcare costs—it'll be years before we know that. But in the short term, it brought us closer to our customers in medical meetings and pharma and biotech," Moscaritolo said.¹⁶

And recent reports of plans to double the size of the Boston Convention and Exhibition Center—a 400,000 sq. ft. expansion projected at \$1 billion—suggest that the Center is fiscally healthy and booked out in future years, in part by medical industry events.^{17 18}

Transparency statutes requiring disclosure by pharmaceutical, device and biotechnology manufacturers of payments to physicians or other prescribers are part of a national trend. The experience of other states adopting such provisions might reasonably be expected to be similar to that in Massachusetts. By addressing these issues Connecticut is part of a broad national effort to restore trust in the medical profession and protect patients and public programs.

Thank you very much. Please feel free to contact me with any questions or for further information at mhams@communitycatalyst.org

¹⁶ Medical Meetings. Massachusetts Medical Meetings Business Still Healthy. Oct. 8, 2009. Retrieved at: <http://meetingsnet.com/medicalmeetings/news/1008-massachusetts-meetings-business-successful/>

¹⁷ Boston Globe. New drug firm limits prompt fears of falloff in medical meetings in city. Jan. 24, 2009. Retrieved at: http://www.boston.com/news/local/massachusetts/articles/2009/01/24/new_drug_firm_limits_prompt_fears_of_falloff_in_medical_meetings_in_city/

¹⁸ Statehouse News Service. Officials envision near-doubling of Boston Convention Center. Nov. 23, 2009.